

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
Region 21

COASTAL COMMUNITIES HOSPITAL, INC.
d/b/a COASTAL COMMUNITIES HOSPITAL¹

Employer

and

Case 21-RC-21115

NATIONAL UNION OF HEALTHCARE
WORKERS

Petitioner

and

SEIU UNITED HEALTHCARE WORKERS-
WEST

Intervenor

WMC-A, INC. d/b/a WESTERN MEDICAL
CENTER-ANAHEIM²

Employer

and

Case 21-RC-21116

NATIONAL UNION OF HEALTHCARE
WORKERS

Petitioner

and

SEIU UNITED HEALTHCARE WORKERS-
WEST

Intervenor

¹ The name of this Employer appears as corrected at the hearing.

² The name of this Employer appears as corrected at the hearing.

DECISION AND ORDER

On February 23, 2009, the National Union of Healthcare Workers (“Petitioner”), filed the above-referenced petitions seeking elections. In Case 21-RC-21115, the petitioned-for bargaining unit consists of approximately 230 employees at Coastal Communities Hospital, Inc. (“Coastal Communities”). In Case 21-RC-21116, the petitioned-for bargaining unit consists of approximately 260 employees at Western Medical Center–Anaheim (“Western Medical”).

On March 10, 2010, a consolidated hearing in these matters was held before a hearing officer of the National Labor Relations Board (“Board”). Pursuant to the provisions of Section 3(b) of the National Labor Relations Act (“Act”), the Board has delegated its authority in this proceeding to the undersigned.

I. ISSUES

As it relates to both petitions, the central issue is whether the collective-bargaining agreement between Coastal Communities and Western Medical (collectively called the “Employers”), and Service Employees International Union, United Healthcare Workers–West (“Intervenor”), operates as a contract bar to those petitions. In the petition involving Coastal Communities (21-RC-21115), another issue is whether there is a certification bar to the petition. Finally, there is also an issue as to whether the Petitioner is a labor organization under Section 2(5) of the Act.

II. SUMMARY

Based on the record, including the post-hearing briefs filed by the Employers and the Intervenor, I find that a contract bar exists, which precludes the further processing of both petitions at issue.³ I further find that there is a certification bar to the further processing of the petition involving Coastal Communities (Case 21-RC-21115). Accordingly, I conclude that each petition should be dismissed. Finally, I conclude that the Petitioner is a labor organization within the meaning of the Section 2(5) of the Act.

III. FACTS

A. Contract Bar and Certification Bar

Integrated Healthcare Holdings, Inc. (“IHHI”) owns Coastal Communities and Western Medical. The Intervenor and Western Medical were signatory to a collective-bargaining agreement with a term of January 1, 2007, to December 31, 2009.⁴ The agreement covers the following unit of employees:

Included: All full-time, part-time and per diem service and maintenance employees, technical, and business office clerical employees employed by the Employer at its hospital facility located at 1025 South Anaheim Boulevard, Anaheim, California.

Excluded: All other employees, skilled maintenance employees, professional employees, registered nurses, confidential employees, physicians, residents, central business office employees (whether facility based or not) who are solely engaged in qualifying or collection activities or are employed by another entity, such as Syndicated Office Systems, or Patient Financial Services, employees of outside registries and other agencies supplying labor to the Facility and already represented employees, guards, managers and supervisors as defined in the Act.

³ Petitioner did not file a post-hearing brief in either case.

⁴ A copy of the agreement was entered into the record as Employers Exhibit 1. All citations to the Employers’ exhibits will be referred to as “Employers Exhibit” followed by the appropriate number(s). All citation to the Board’s exhibits will be referred to as “Board Exhibit” followed by the appropriate number(s). All citation to the Intervenor’s exhibits will be referred to as “Intervenor Exhibit” followed by the appropriate number(s).

On April 23, 2008, the Intervenor was certified in Case 21-RC-21026 as the representative of the following unit of employees at Coastal Communities:⁵

Included: All full-time, part-time and per diem service and maintenance employees, technical employees, skilled maintenance employees and business office clerical employees employed by the Employer at its hospital facility located at 2701 South Bristol Street, Santa Ana, California.

Excluded: All other employees, professional employees, registered nurses, confidential employees, physicians, residents, central business office employees (whether facility based or not) who are solely engaged in qualifying or collection activities or are employed by another entity, employees of outside registries and other agencies supplying labor to the Employer and already represented employees, guards, managers and supervisors as defined in the Act.

In around May or June 2008, the Intervenor commenced bargaining with Coastal Communities. Barbara Lewis (“Lewis”), the Intervenor’s then-director and administrative vice president, served as the Intervenor’s contract negotiator.⁶ At some point early in negotiations, Lewis proposed that Western Medical be included in the negotiations and that there be a single master collective-bargaining agreement covering the bargaining unit employees at both facilities. Thereafter the Intervenor and the Employers bargained for one master collective-bargaining agreement to cover both facilities. Raymond Thomas (“Thomas”), attorney, bargained on behalf of the Employers.

Using the Western Medical collective-bargaining agreement as a template, the Employers and the Intervenor added desired provisions and language and deleted unwanted provisions and language. With each tentative agreement to add or delete contract language, the Employers and the Intervenor indicated the date upon which they reached agreement. On about August 25, 2008, the Employers and the Intervenor reached a final collective-bargaining agreement (“CBA”), covering represented employees at both facilities and with a term of August 25, 2008,

⁵ A copy of the certification in Case 21-RC-21026 was entered into the record as Board Exhibit 3.

⁶ Lewis is now working with the Petitioner and testified on its behalf during the hearing.

to August 31, 2011.⁷ The CBA memorializes that the parties tentatively agreed on a variety of terms and conditions of work, including, but not limited to: employees' wages and compensation, health and welfare benefits, grievance and arbitration, discipline, seniority, layoff, recall rights, job bidding process, anti-discrimination, harassment, hours of work, overtime, vacation and holiday scheduling, and leaves of absence. Each page of the 64-page CBA, including the attached wage scales and addendums, bears Thomas' and Lewis' initials.⁸

On August 25, 2008, the Employers and the Intervenor also signed an agreement entitled "IHHI/UHW Agreement Re Article 15 Issues at Western Medical Center Anaheim and Coastal Communities Hospital" ("Article 15 Agreement"), which agreement relates to the health and welfare benefits offered to the two bargaining units through the CBA.⁹

On about August 28 and 29, 2008, the Intervenor's representatives conducted ratification-vote meetings with the bargaining unit at each facility and explained the terms of the CBA to employees. At each meeting the unit employees voted to ratify the negotiated CBA.¹⁰ By letter dated August 30, 2008, the Intervenor, through Lewis, notified the Employers that the bargaining units had ratified the CBA and "[a]ll terms and conditions are now in effect."¹¹ By letters dated September 19 and 22, 2008, the Intervenor notified unit employees of Western Medical and Coastal Communities, respectively, that the master CBA had been ratified and was in effect.¹² After ratification, the Employers implemented the master CBA, the Article 15 Agreement, and employees' wage rates at each facility; deducted dues from unit employees and forwarded those

⁷ A copy of the CBA was entered into the record as Employers Exhibit 2.

⁸ The initials are "RWT" for Raymond W. Thomas and "BL" for Barbara Lewis. The letters "TA" also appear on along with the parties' initials, which is a reference to "tentative agreement."

⁹ A copy of the Article 15 Agreement was entered into the record as Employers Exhibit 3.

¹⁰ It is not clear from the record whether employee ratification was a condition precedent to an effective CBA.

¹¹ A copy of the Union's letter was entered into the record as Employers Exhibit 4.

¹² Copies of the letters, both signed by Lewis, were entered into the record as Intervenor Exhibits 9 and 10.

dues to the Intervenor; disciplined employees pursuant to the CBA; processed grievances, and carried out arbitrations under the grievance-and-arbitration procedure.¹³

At some point after the CBA was ratified and implemented, the Employers contacted the Intervenor, seeking to change the negotiated provisions relating to the 401(k) plan and the retiree medical-benefit provision. According to Lewis, the Employers requested that the CBA be left open so that the parties could negotiate changes to the aforementioned provisions. Though the parties met, no changes were agreed upon or made to the CBA relating to these provisions.

Finally, after the CBA was ratified and implemented the Employers and the Intervenor spent time exchanging copies of the CBA to “clean” it up. It is not fully explained in the record, but it appears that this cleaning-up process was to correct errors. What is clear is that no substantive changes were made as a result of the cleaning-up process.

B. Labor Organization Status

At the hearing, the Intervenor refused to stipulate that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. The Petitioner, however, has been certified in previous Board representation elections. Thus, the hearing officer took administrative notice of the certifications of representative issued in Cases 21-RC-21117, 21-RC-21118 and 21-RC-21157.¹⁴

¹³ Entered into the record as Employers Exhibit 5 was a copy of a November 20, 2009, settlement agreement of a class-action grievance filed on behalf of the unit employees who work at Western Medical. Entered into the record as Intervenor Exhibits 1 and 2, respectively, were a grievance letter and a settlement agreement over the issue of retirement, filed on behalf of the unit employees who work at Western Medical. Entered into the record as Intervenor Exhibit 3 were a series of emails regarding another grievance over the retiree medical-benefit provision. Entered into the record as Intervenor Exhibit 4 were emails relating to a grievance filed over the treatment of a unit employee. Entered into the record as Intervenor Exhibit 5 was a class-action grievance filed over Western Medical employees not receiving the 2009 wage rates.

¹⁴ Copies of the certifications were entered into the record as Board Exhibit 2.

IV. POSITIONS OF THE PARTIES

The Employers and the Intervenor contend that the CBA constitutes a contract bar to both petitions; and that there is a certification bar to the Coastal Communities petition (21-RC-21115) since that petition was filed within the 1-year certification period.

Though it failed to submit a post-hearing brief, the Petitioner asserts that there is no contract bar and no certification bar. During the hearing, the Petitioner claimed that the Employers' proposed changes to the 401(k) plan and retiree medical-benefit provision, and the fact that no signatures appear on the master CBA, support its position that no CBA was ever finalized; and thus, there is no contract bar. The record does not reflect the Petitioner's position on the issue a certification bar.

There was no evidence put on by the parties as to the labor organization status of the Petitioner.

V. ANALYSIS

A. Contract Bar

To serve as a contract bar to an election, the Board requires that a contract meet certain specific requirements, as outlined in Appalachian Shale Products Co., 121 NLRB 1160 (1958). Thus, the contract must: be a written collective-bargaining agreement; signed by the parties before the rival petition is filed; contain substantial terms and conditions of employment sufficient to stabilize the bargaining relationship; encompass the employees involved in the petition; and cover an appropriate bargaining unit. Here, the CBA establishes a contract bar to both petitions involved in these matters.

1. Written Agreement Signed by the Parties

After the Intervenor was certified as the bargaining representative for Coastal Communities' employees, and at the Intervenor's request, the Employers commenced bargaining with the Intervenor for a single master agreement that would cover the Western Medical and Coastal Communities bargaining units. On about August 25, 2008, the Employers and the Intervenor concluded negotiations, initialed each page of the CBA, and attached addendums and wage scales. The resulting CBA is in writing, with red-lined/stricken-through provisions that were removed from the CBA, and with added provisions and contract language. The CBA also contains the date upon which each removed and added provision was tentatively agreed-upon.

The Petitioner argues that the CBA was never reduced to final form. However, there is no requirement that to operate as a contract bar the contract be a formal final document. In fact, the contract-bar rule can be satisfied by a group of informal agreements as long as those agreements contain substantial terms and conditions of employment, are signed, and fulfill the remaining contract-bar requirements. Waste Management of Maryland, 338 NLRB 1002 (2003); Georgia Purchasing, Inc., 230 NLRB 1174 (1977).

In addition, the Petitioner argues that neither the Employers nor the Intervenor affixed official signatures to a final clean copy of the CBA, and instead initialed each page of a series of tentative agreements. Nevertheless, it is well-settled Board law that initialing tentative agreements satisfies the signature requirement for the contract-bar rule. St. Mary's Hospital, 317 NLRB 89, 90 (1995); Television Station WVTM, 250 NLRB 198 (1980). Thus, I find that the initialing of the CBA was sufficient to establish the signature requirement of the contract-bar rule.

2. Contains Substantial Terms and Conditions of Employment

The CBA contains substantial terms and conditions of employment sufficient to stabilize the bargaining relationship. In Appalachian Shale Products, the Board held that no contract bar will be found if the contract is limited to wages only. Instead, “real stability in industrial relations can only be achieved where the contract undertakes to chart with adequate precision the course of the bargaining relationship, and the parties can look to the actual terms and conditions of their contract for guidance in their day-to-day problems.” 121 NLRB at 1163. Here, the CBA contains provisions relating to employees’ wages and compensation, health and welfare benefits, grievance and arbitration, discipline, seniority, layoff, recall rights, job-bidding process, anti-discrimination, harassment, hours of work, overtime, vacation and holiday scheduling, and leaves of absence. The CBA further contains an effective date of August 25, 2008, and an expiration date of August 31, 2011. These provisions are sufficient to stabilize the bargaining relationship and guide the parties in addressing any day-to-day problems that might arise.

The Petitioner argues that after the CBA was ratified and implemented, the Employers sought to leave open the CBA to discuss proposed changes to the 401(k) plan and the retiree medical-benefit provision. In support of its position, the Petitioner presented Lewis, who is the former agent for the Intervenor, and the agent who negotiated the CBA in question. Lewis testified that the Employers contacted the Intervenor to discuss changes to the 401(k) plan and retirement benefits and requested that the CBA be left open to discuss the proposed changes. However, no documents were introduced into the record that memorialize any agreement to leave open the CBA. After initially claiming that there was an agreement that the CBA would be left open, Lewis then abandoned that argument and testified that while meetings were held, the Intervenor did not agree to leave open the CBA for negotiations over the proposed changes.

Rather, Lewis testified that the Intervenor only agreed to discuss the issues with the Employers. Lewis conceded that the Intervenor never released the Employers from the master CBA. Nor did the Intervenor notify unit employees that the CBA was no longer in effect or remained open. In fact, the balance of all the evidence supports a finding that the Employers and the Intervenor operated under an effective CBA. There is no evidence suggesting or supporting a finding that the CBA was abandoned or that the parties intended to do so. Thus, the record does not establish the CBA lacked substantial terms and conditions of employment because the Employers sought to revisit the issues of the 401(k) plan and the retiree medical-benefit provision.

Accordingly, I find that the CBA contained substantial terms and conditions of employment sufficient to stabilize the bargaining relationship.

3. Encompasses the Employees Involved in the Petitions

There is no dispute that the CBA encompasses the same two bargaining units that are involved in the petitions.

4. Covers an Appropriate Unit

The bargaining units are appropriate for the purposes of bargaining. Each of the units has been deemed an appropriate unit in previous Board elections, and the CBA does not deviate from the units found appropriate. Furthermore, the parties stipulated to the appropriateness of the two bargaining units.

Finally, the surrounding facts support a finding that the Employers and the Intervenor agreed to be bound by the CBA. It is undisputed that the Intervenor conducted a ratification vote with each of the bargaining units, explained the terms of the new CBA, and that each bargaining unit voted to ratify the CBA. It is also undisputed that the Intervenor then notified the

Employers that the CBA had been ratified and that it was in effect. It is further undisputed that the Employers implemented the terms of the CBA, including employees' wages and benefits, and the Intervenor filed grievances pursuant to the CBA, which were processed. All of these factors demonstrate the existence of an effective CBA. Therefore, I find that the CBA establishes a contract bar as to both petitions.

B. Certification Bar

While it is not necessary to determine the certification-bar issue due to the above-noted finding of a contract bar, the petition in Case 21-RC-21115 is also barred based on the 1-year certification rule. Under the 1-year certification rule, the Board requires the dismissal of any petition filed within 1 year after certification. Here, on April 23, 2008, the Intervenor was certified to represent the above-described Coastal Communities bargaining unit. On February 23, 2009, prior to conclusion of the 1-year period, the Petitioner filed the petition in Case 21-RC-21115, to represent the same Coastal Communities bargaining unit.

The fact that the petition was not processed until 2010 does not assist the Petitioner's argument that there is no certification bar. Thus, the Board has held that "the mere retention on file of such petition, although unprocessed, cannot but detract from the full import of a Board certification, which should be permitted to run its complete 1-year course before any question of the representative status of the certified union is given formal cognizance by the Board." Centr-O-Cast & Engineering Co., 100 NLRB 1507, 1508 (1952). Therefore, I also find that a certification bar exists to the petition in Case 21-RC-21115.

C. Labor Organization Status of the Petitioner

Section 2(5) of the Act requires that a labor organization be an organization in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning wages, hours, and other terms and conditions of employment.

Alto Plastics Manufacturing Corp., 136 NLRB 850 (1962). Here, there is no record evidence pertaining to the Petitioner's labor organization status; however, in previous representation cases Region 21 has determined that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. In those previous cases Region 21 has held elections and issued certifications of representative regarding the Petitioner.¹⁵ Accordingly, I find that the Petitioner is a labor organization within the meaning of the Act.

VI. CONCLUSION

In conclusion, I find that the Board's contract-bar rule applies, and that the contract here constitutes a bar to both petitions. As to the petition filed in Case 21-RC-21115, I further conclude that the certification-bar rule applies, constituting a bar to that petition. Finally, I conclude that the Petitioner is a labor organization within the meaning of Section 2(5) of the Act. Accordingly,

IT IS HEREBY ORDERED that the petitions in Cases 21-RC-21115 and 21-RC-21116 are dismissed.

¹⁵ As stated above, certifications of representative have been issued regarding the Petitioner in Cases 21-RC-21117, 21-RC-21118, and 21-RC-21157. See Board Exhibit 2.

RIGHT TO REQUEST REVIEW

Under the provisions of Section 102.67 of the Board's Rules and Regulations, a request for review of this Decision may be filed with the National Labor Relations Board, addressed to the Executive Secretary, 1099 14th Street, N.W., Washington, DC 20570-0001. This request must be received by the Board in Washington by April 22, 2010. The request may be filed electronically through E-Gov on the Agency's website, www.nlr.gov,¹⁶ but may not be filed by facsimile.

Dated at Los Angeles, California, this 8th day of April, 2010.

/s/James F. Small
James F. Small
Regional Director, Region 21
National Labor Relations Board

¹⁶ To file the request for review electronically, go to www.nlr.gov and select the **E-Gov** tab. Then click on the **E-Filing** link on the menu, and follow the detailed instructions. Guidance for E-filing is contained in the attachment supplied with the Regional Office's initial correspondence on this matter and is also located under "E-Gov" on the Agency's website, www.nlr.gov.